

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE JUNE 4, 2003

AMENDED IN SENATE MAY 7, 2003

SENATE BILL

No. 923

Introduced by Senator Sher

February 21, 2003

An act to amend Sections 13261, 13265, and Section 13269 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 923, as amended, Sher. Water quality : *waivers*.

~~(1) The~~

Existing law, the Porter-Cologne Water Quality Control Act, provides that any person failing to furnish a report or pay a fee, or discharging waste in violation of certain waste discharge requirements, after that person has been requested to furnish a report or pay a fee or notified in writing by a California regional water quality control board about that violation, as applicable, is guilty of a misdemeanor.

This bill would delete the request and notification requirements. By expanding the scope of a crime, this bill would impose a state-mandated local program. The bill would require the regional board or the superior court to consider certain factors in determining the amount of civil liability.

~~(2) The act provides that a regional board may waive certain waste discharge requirements for specific discharges or specific types of discharges if the waiver is not against the public interest. The act provides that the waivers are subject to conditions.~~

This bill, ~~instead, would provide that~~ *instead, would authorize* the state board or a regional board ~~may to~~ waive those waste discharge requirements if certain requirements are met. The bill would require the conditions of the waivers to include ~~the payment of an annual fee and, with certain exceptions,~~ the performance of individual, group, or watershed-based monitoring duties. *The bill would authorize the state board or a regional board to include as a condition of the waiver the payment of an annual fee.* The bill would require the funds generated by the payment of the fee to be deposited in the Water Discharge Permit Fund for expenditure, upon appropriation, by the state board or the appropriate regional board to ~~carry out the act~~ *establish and implement the waiver program.* The bill would require the *state board or* regional board to provide notice regarding the adoption of a waiver.

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes *no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13261 of the Water Code is amended to~~
2 ~~read:~~
3 ~~13261. (a) Any person failing to furnish a report or pay a fee~~
4 ~~under Section 13260 is guilty of a misdemeanor and may be liable~~
5 ~~civilly in accordance with subdivision (b). A complaint alleging~~
6 ~~the act or failure to act that constitutes the violation shall be~~
7 ~~prepared and served, and a hearing conducted on the complaint, in~~
8 ~~accordance with subdivisions (a) and (b) of Section 13323.~~
9 ~~(b) (1) Civil liability may be administratively imposed by a~~
10 ~~regional board or the state board in accordance with Article 2.5~~
11 ~~(commencing with Section 13323) of Chapter 5 for a violation of~~
12 ~~subdivision (a) in an amount that may not exceed one thousand~~

1 dollars (\$1,000) for each day in which the violation occurs. In
2 determining the amount of civil liability, the regional board shall
3 consider the factors described in Section 13327. For purposes of
4 this section only, the state board shall have the same authority and
5 shall follow the same procedures as set forth in Article 2.5
6 (commencing with Section 13323) of Chapter 5, except that the
7 executive director shall issue the complaint with review by the
8 state board. Civil liability may not be imposed by the regional
9 board pursuant to this section if the state board has imposed
10 liability against the same person for the same violation.

11 (2) Civil liability may be imposed by the superior court in
12 accordance with Article 5 (commencing with Section 13350) and
13 Article 6 (commencing with Section 13360) of Chapter 5 for a
14 violation of subdivision (a) in an amount that may not exceed five
15 thousand dollars (\$5,000) for each day the violation occurs. In
16 determining the amount of civil liability, the superior court shall
17 consider the factors described in Section 13351.

18 (e) Any person discharging or proposing to discharge
19 hazardous waste, as defined in Section 25117 of the Health and
20 Safety Code, who knowingly furnishes a false report under Section
21 13260, or who either willfully fails to furnish a report or willfully
22 withholds material information under Section 13260 despite
23 actual knowledge of that requirement, may be liable in accordance
24 with subdivision (d) and is guilty of a misdemeanor. This
25 subdivision does not apply to any waste discharge that is subject
26 to Chapter 5.5 (commencing with Section 13370).

27 (d) (1) Civil liability may be administratively imposed by a
28 regional board in accordance with Article 2.5 (commencing with
29 Section 13323) of Chapter 5 for a violation of subdivision (c) in
30 an amount that may not exceed five thousand dollars (\$5,000) for
31 each day the violation occurs.

32 (2) Civil liability may be imposed by the superior court in
33 accordance with Article 5 (commencing with Section 13350) and
34 Article 6 (commencing with Section 13360) of Chapter 5 for a
35 violation of subdivision (c) in an amount that may not exceed
36 twenty-five thousand dollars (\$25,000).

37 SEC. 2.— Section 13265 of the Water Code is amended to read:

38 13265. (a) Any person discharging waste in violation of
39 Section 13264 is guilty of a misdemeanor and may be liable civilly
40 in accordance with subdivision (b). Each day of such discharge

1 shall constitute a separate offense. A complaint alleging the act or
2 failure to act that constitutes the violation shall be prepared and
3 served, and a hearing conducted on the complaint, in accordance
4 with subdivisions (a) and (b) of Section 13323.

5 (b) (1) Civil liability may be administratively imposed by a
6 regional board in accordance with Article 2.5 (commencing with
7 Section 13323) of Chapter 5 for a violation of subdivision (a) in
8 an amount which shall not exceed one thousand dollars (\$1,000)
9 for each day in which the violation occurs. In determining the
10 amount of civil liability, the regional board shall consider the
11 factors described in Section 13327.

12 (2) Civil liability may be imposed by the superior court in
13 accordance with Article 5 (commencing with Section 13350) and
14 Article 6 (commencing with Section 13360) of Chapter 5 for a
15 violation of subdivision (a) in an amount which shall not exceed
16 five thousand dollars (\$5,000) for each day in which the violation
17 occurs. In determining the amount of civil liability, the superior
18 court shall consider the factors described in Section 13351.

19 (c) (1) Any person discharging hazardous waste, as defined in
20 Section 25117 of the Health and Safety Code, in violation of
21 Section 13264 is guilty of a misdemeanor and may be liable civilly
22 in accordance with subdivision (d). That liability shall not be
23 imposed if the discharger is not negligent and immediately files a
24 report of the discharge with the board, or if the regional board
25 determines that the violation of Section 13264 was insubstantial.

26 (2) This subdivision does not apply to any waste discharge that
27 is subject to Chapter 5.5 (commencing with Section 13370).

28 (d) (1) Civil liability may be administratively imposed by a
29 regional board in accordance with Article 2.5 (commencing with
30 Section 13323) of Chapter 5 for a violation of subdivision (c) in
31 an amount which shall not exceed five thousand dollars (\$5,000)
32 for each day in which the violation occurs.

33 (2) Civil liability may be imposed by the superior court in
34 accordance with Article 5 (commencing with Section 13350) and
35 Article 6 (commencing with Section 13360) of Chapter 5 for a
36 violation of subdivision (c) in an amount which shall not exceed
37 twenty-five thousand dollars (\$25,000) for each day in which the
38 violation occurs.

39 SEC. 3.—

SECTION 1. Section 13269 of the Water Code is amended to read:

13269. (a) (1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or ~~a specific type of discharge, after a public hearing, if the state board or a regional board determines type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting,~~ that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. ~~The state board or a regional board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.~~

~~(2) A waiver for a specific types of discharge may not exceed board or a regional board shall give notice of any necessary meeting by publication pursuant to Section 11125 of the Government Code.~~

(2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. ~~The conditions of the waiver shall include, but are not limited to, both of the following:~~

(A) ~~The payment of an annual fee established by the state board in accordance with subdivision (f) of Section 13260. Funds generated by the payment of the fee shall be deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, by the state board or appropriate regional board solely for the purposes of carrying out this division.~~

(i) ~~In establishing the amount of a fee that may be imposed on any irrigated agriculture operation pursuant to this section, the state board shall consider all of the following factors: the size of the operations, the type and amount of discharges involved, the pricing mechanism of the commodities produced, any compliance costs borne by the operations pursuant to state and federal water quality regulations, any costs associated with water quality monitoring performed by the operation, and participation in a watershed management program approved by the applicable regional board.~~

~~(ii) In establishing the amount of a fee that may be imposed on silviculture operations pursuant to this section, the state board shall consider all of the following factors: the size of the operation, the type and amount of discharges involved, the pricing mechanism of the commodities produced, any compliance costs borne by the operations pursuant to state and federal regulations, any costs associated with water quality monitoring performed by the operation, and the average annual number of timber harvest plans proposed by the operation.~~

~~(iii) If the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state, all or part of the annual fee shall be refunded.~~

~~(iv) The total amount of annual fees collected pursuant to this section shall equal an amount not greater than the amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waivers of waste discharge requirements.~~

~~(B) The performance of individual, group, or watershed-based monitoring, as required by the regional board, of all discharges other than those discharges that will not affect, or have the potential to affect, the quality of the waters of the state. The monitoring requirements, at a minimum, shall be designed to verify the constituents of the discharge and the adequacy and effectiveness of the waiver's conditions. In establishing individual or group monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including existing watershed-based compliance and effectiveness monitoring efforts; and the size of the project area. Monitoring results shall be made available to the public.~~

~~(3) The regional board shall give notice of the adoption of a waiver and its conditions by publication within the affected county or counties pursuant to Section 6061 of the Government Code. In addition to publication, the regional board shall give notice of the adoption of a waiver and its conditions by mail to the persons making or proposing the discharge, or changes to the discharge, if those persons have provided to the regional board a name and mailing address to which the notice may be sent. If available, the regional board shall make use of mailing addresses in other~~

~~databases, such as those databases managed by the Department of Pesticide Regulation, the county assessor's office, county agricultural commissioners, or the local water districts, to provide notice to those persons.~~ conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based, monitoring, except as provided in paragraph (3). Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

(3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

(4) (A) The state board or a regional board may include as a condition of a waiver the payment of an annual fee established by the state board in accordance with subdivision (f) of Section 13260.

(B) Funds generated by the payment of the fee shall be deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, by the state board or appropriate regional board for the purpose of carrying out activities limited to those necessary to establish and implement the waiver program pursuant to this section. The total amount of annual fees collected pursuant to this section shall not exceed the costs of those activities necessary to establish and implement waivers of waste discharge requirements pursuant to this section.

(C) In establishing the amount of a fee that may be imposed on irrigated agriculture operations pursuant to this section, the state board shall consider relevant factors, including, but not limited to, all of the following:

(i) The size of the operations.

1 (ii) *Any compliance costs borne by the operations pursuant to*
2 *state and federal water quality regulations.*

3 (iii) *Any costs associated with water quality monitoring*
4 *performed or funded by the operations.*

5 (iv) *Participation in a watershed management program*
6 *approved by the applicable regional water quality control board.*

7 (D) *In establishing the amount of a fee that may be imposed on*
8 *silviculture operations pursuant to this section, the state board*
9 *shall consider relevant factors, including, but not limited to, all of*
10 *the following:*

11 (i) *The size of the operations.*

12 (ii) *Any compliance costs borne by the operations pursuant to*
13 *state and federal water quality regulations.*

14 (iii) *Any costs associated with water quality monitoring*
15 *performed or funded by the operations.*

16 (iv) *The average annual number of timber harvest plans*
17 *proposed by the operations.*

18 (5) *The state board or a regional board shall give notice of the*
19 *adoption of a waiver by publication within the affected county or*
20 *counties as set forth in Section 6061 of the Government Code.*

21 (b) (1) *A waiver in effect on January 1, 2000, shall remain*
22 *valid until January 1, 2003, unless the regional board terminates*
23 *that waiver prior to that date. All waivers that were valid on*
24 *January 1, 2000, and granted an extension until January 1, 2003,*
25 *and not otherwise terminated, may be renewed by a regional board*
26 *in five-year increments.*

27 (2) *Notwithstanding paragraph (1), a waiver for an onsite*
28 *sewage treatment system that is in effect on January 1, 2002, shall*
29 *remain valid until June 30, 2004, unless the regional board*
30 *terminates the waiver prior to that date. Any waiver for onsite*
31 *sewage treatment systems adopted or renewed after June 30, 2004,*
32 *shall be consistent with the applicable regulations or standards for*
33 *onsite sewage treatment systems adopted or retained in accordance*
34 *with Section 13291.*

35 (c) *Upon notification of the appropriate regional board of the*
36 *discharge or proposed discharge, except as provided in subdivision*
37 *(d), the provisions of subdivisions (a) and (c) of Section 13260,*
38 *subdivision (a) of Section 13263, and subdivision (a) of Section*
39 *13264 do not apply to a discharge resulting from any of the*
40 *following emergency activities:*

1 (1) Immediate emergency work necessary to protect life or
2 property or immediate emergency repairs to public service
3 facilities necessary to maintain service as a result of a disaster in
4 a disaster-stricken area in which a state of emergency has been
5 proclaimed by the Governor pursuant to Chapter 7 (commencing
6 with Section 8550) of Division 1 of Title 2 of the Government
7 Code.

8 (2) Emergency projects undertaken, carried out, or approved
9 by a public agency to maintain, repair, or restore an existing
10 highway, as defined in Section 360 of the Vehicle Code, except for
11 a highway designated as an official state scenic highway pursuant
12 to Section 262 of the Streets and Highways Code, within the
13 existing right-of-way of the highway, damaged as a result of fire,
14 flood, storm, earthquake, land subsidence, gradual earth
15 movement, or landslide within one year of the damage. This
16 paragraph does not exempt from this section any project
17 undertaken, carried out, or approved by a public agency to expand
18 or widen a highway damaged by fire, flood, storm, earthquake,
19 land subsidence, gradual earth movement, or landslide.

20 (d) Subdivision (c) is not a limitation of the authority of a
21 regional board under subdivision (a) to determine that any
22 provision of this division shall not be waived or to establish
23 conditions of a waiver. Subdivision (c) shall not apply to the extent
24 that it is inconsistent with any waiver or other order or prohibition
25 issued under this division.

26 (e) The regional boards and the state board shall require
27 compliance with the conditions pursuant to which waivers are
28 granted under this section.

29 (f) Prior to renewing any waiver for a specific type of discharge
30 established under this section, the state board or a regional board
31 shall review the terms of the waiver policy at a public hearing. At
32 the hearing, the state board or a regional board shall determine
33 whether the discharge for which the waiver policy was established
34 should be subject to general or individual waste discharge
35 requirements.

36 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
37 ~~Section 6 of Article XIII B of the California Constitution because~~
38 ~~the only costs that may be incurred by a local agency or school~~
39 ~~district will be incurred because this act creates a new crime or~~
40 ~~infraction, eliminates a crime or infraction, or changes the penalty~~

1 ~~for a crime or infraction, within the meaning of Section 17556 of~~
2 ~~the Government Code, or changes the definition of a crime within~~
3 ~~the meaning of Section 6 of Article XIII B of the California~~
4 ~~Constitution.~~

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